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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,487	10/07/2003	Geoffrey Frank Deane	INOGN.006A	5894
20995 7590 04/24/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3772	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		04/24/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/24/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/681,487

Applicant(s)

DEANE ET AL.

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10.07.2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-21 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11.15.2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **7, 10 and 13-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Czubala (US 6,346,139).

3. As to **claims 7 and 17**, Czubala teaches a total delivery oxygen concentration system that comprises a frame having a support portion and a handle portion **11 (see figures 1 and 2)**, the support portion adapted to receive a portable gas fractionalization unit **10 (see figure 2; column 4 lines 50-55)** for transporting the unit in response to force on the handle portion (**see column 55-65**); and a power supply mounted on the frame, the power supply having an A.C. power input, a first power outlet adapted to charge a battery, and a second power outlet, adapted to power the unit (**see column 6 lines 4-20**).

4. As to **claim 10**, Czubala teaches an apparatus wherein the frame has a second support portion adapted to receive a battery (**Since the batteries are located within the oxygen concentration unit, the oxygen concentration unit is defined as a second support portion adapted to receive a battery**).

4. As to **claim 13**, Czubala teaches an apparatus wherein the first power outlet is adapted to charge a spare battery (**see column 6 lines 4-20**).

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5. As to **claim 14**, Czabala teaches an apparatus wherein the first power outlet is adapted to charge a battery mounted inside the unit (see **column 6 lines 4-20**).

6. As to **claim 15**, Czabala teaches an apparatus wherein the power supply has a third and a fourth power outlet, each adapted to charge a spare battery (see **column 6 lines 4-20**).

7. As to **claim 16**, Czabala teaches an apparatus wherein the power supply is sufficient to simultaneously power the unit and power the outlets for charging the spare batteries and the battery inside the unit (see **column 6 lines 4-20**).

8. As to **claim 18**, Czabala teaches an apparatus wherein the portable gas fractionalization unit comprises an oxygen concentrator **10** (see **column 4 lines 50-55**).

9. As to **claim 19**, Czabala teaches an apparatus that further comprises an integrated power cord (see **column 11 lines 30-40**).

10. As to **claim 20**, Czabala teaches an apparatus that further comprises storage compartments for storing oxygen concentrator accessories (see **column 6 lines 4-20; the one or more batteries is defined as oxygen concentrator accessories**).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 6,848,444) in view of Frye et al. (US 6,394,088).

14. As to claims 1 and 2, Smith substantially discloses an oxygen concentrator having an oxygen delivery outlet (see abstract); a conserver that delivers oxygen in metered amounts in response to sensed breaths of the patient, the conserver being connected to receive oxygen from the other end of the tube and deliver the oxygen to the patient (see column 3 lines 20-30; column 5 lines 5-15; column 6 lines 60-67; column 10 lines 5-20), but does not disclose a flexible tubing that has a length of 50 to 100 feet. Frye discloses an apparatus that does provide flexible tubing having a length of at least 50 feet (see column 4 lines 45-55). Therefore it would have been obvious at the time the invention was made to modify Smith's invention by providing a flexible tubing having a length of at least 50 feet as taught by Frye so that the patient is able to move about while maintaining the ability to receive a conserved oxygen delivery.

15. As to claims 3 and 4, Smith substantially discloses the applicant's invention as claimed, but does not disclose a conserver that comprises an attachment member (clip) adapted for removably attaching the conserver to the patient. Frye discloses an apparatus that does provide a conserver that comprises an attachment member (clip) adapted for removably attaching the

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conserver to the patient (**see column 5 lines 10-25**). Therefore, it would have been obvious at the time the invention was made to modify Smith's invention by providing a conserver that comprises an attachment member (clip) adapted for removably attaching the conserver to the patient in order to maximize mobility of a patient receiving oxygen.

16. **As to claim 5**, Smith teaches an apparatus that provides a conserver that comprises a breath sensor adapted to sense breaths of the patient and a delivery valve adapted for delivering oxygen to the patient (**see column 3 lines 10-20**).

17. **As to claim 6**, Smith teaches an apparatus wherein the portable oxygen concentrator having a weight of no greater than about 10 pounds (**see column 10 lines 35-40**).

18. **Claims 8, 9 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Czabala (US 6,346,139) in view of Miller et al. (US 4,545,790).

19. **As to claims 8 and 21**, Czabala substantially discloses the invention as claimed, see rejections to claims 7, 10 and 13-20 above, but does not disclose a handle portion that is configured with an extended position and retracted position. Miller discloses an apparatus that doe provide a handle portion that is configured with an extended position and retracted position (**see figure 1; Figure 1 shows a rectangle cutout space around the handle 7; figure 1 shows that the handle 7 in an extended position; in the retracted position the handle 7 would be folded within the cutout space**). Therefore it would have been obvious to modify Czabala's invention by providing a handle portion that is configured with an extended position and retracted position as taught by Miller in order to assist the user in moving the portable oxygen concentrator.

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20. As to claim 9, Czabala substantially discloses the invention as claimed, but does not disclose a mobility cart having a height no greater than 18 inches when the handle portion is in the retracted position. It would have been an obvious matter of design choice, since applicant has not disclosed that a mobility cart having a height no greater than 18 inches when the handle portion is in the retracted position solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a mobility cart having a height no greater than 18 inches or any other numeric value.

Allowable Subject Matter

21. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a battery bail that is configured to mate with plurality of guide rails formed on the battery in a manner so as to secure the battery to the battery bail.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nihir Patel

JP Brand
12/7/06